

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

18-P-1504

MOUNTAINONE BANK

vs.

MICHAEL HURLEY.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

The defendant, Michael Hurley, appeals from a summary judgment in favor of the plaintiff, MountainOne Bank (bank), on the bank's action to collect on a loan guaranty. We conclude that there is no evidence in the record that the bank made a false representation of material fact to induce the defendant to sign the contract as a guarantor. Further concluding that there is no issue of material fact whether the contract imposed a legal detriment to the bank that satisfied the consideration requirement, we affirm.

1. Standard of review. "We review a grant of summary judgment de novo." Deutsche Bank Nat'l Trust Co. v. Fitchburg Capital, LLC, 471 Mass. 248, 252-253 (2015). "The standard of review of a grant of summary judgment is whether, viewing the evidence in the light most favorable to the nonmoving party, all

material facts have been established and the moving party is entitled to judgment as a matter of law." Molina v. State Garden, Inc., 88 Mass. App. Ct. 173, 177 (2015), quoting Augat, Inc. v. Liberty Mut. Ins. Co., 410 Mass. 117, 120 (1991). "In order to defeat summary judgment, the [opposing party is] required to 'set forth specific facts showing that there is a genuine issue for trial.'" Athanasiou v. Selectmen of Westhampton, 92 Mass. App. Ct. 94, 98 (2017), quoting Mass. R. Civ. P. 56 (e), 365 Mass. 824 (1974).

2. Fraud in the inducement. Fraud in the inducement occurs "'when a misrepresentation leads another to enter into a transaction with a false impression of the risks, duties, or obligations involved,' but there is no fraud as to the essential nature of the transaction." Suliveres v. Commonwealth, 449 Mass. 112, 117 (2007), quoting Black's Law Dictionary 686 (8th ed. 2004). "One party cannot enforce a contract against another whose signature he has procured by fraud or fraudulent representations, which induced the signer reasonably to believe and understand that the instrument was substantially different from what it really was." St. Fleur v. WPI Cable Sys./Mutron, 450 Mass. 345, 350 n.4 (2008), quoting Boston Five Cents Sav. Bank v. Brooks, 309 Mass. 52, 55 (1941). Here, there is no genuine issue of material fact whether the bank knowingly

misrepresented the nature and contents of the contract and, accordingly, summary judgment was proper.

The bank extended the defendant's daughter, owner of New England Country Rentals, a \$250,000 line of credit on behalf of her company. The loan required a guaranty from a qualified guarantor. The defendant presented no admissible evidence to support his contention that the bank induced him to sign the guaranty by telling him it was "an illusory document merely for the appearance of 'familial support.'" Rather, the defendant testified in his deposition that it was his daughter's comments that caused him to believe that the bank would not pursue collection.

The defendant did present evidence (some of which was disputed by the bank) that the bank's agent stated that the loan was temporary and would be replaced by a subsequent agreement. There is, however, no evidence that such statements were knowing misrepresentations. To the contrary, the loan initially matured fewer than four months after signing. Contrast St. Fleur, 450 Mass. at 346-347 (manager insisted that employee sign arbitration agreement without telling her it was arbitration agreement and without including pages of agreement that explained it was arbitration agreement). The defendant admitted that he had "no reason" to believe that the bank was misrepresenting its understanding that the loan would be

"temporary." Accordingly, there was no genuine issue of material fact whether the bank misrepresented the agreement.

Where there is no evidence that the bank misrepresented the contract to the defendant, the possibility of the defendant's own misunderstanding of the contract does not present a genuine issue of material fact as to whether there was fraud in the inducement. See id. at 355 ("Typically, one who signs a written agreement is bound by its terms"). "When the words of a contract are clear they alone determine the meaning of the contract." EventMonitor, Inc. v. Leness, 473 Mass. 540, 549 (2016), quoting Merrimack Valley Nat'l Bank v. Baird, 372 Mass. 721, 723 (1977). Here, the guaranty expressed terms that the defendant "unconditionally, absolutely, and irrevocably guarantees to Lender the full and prompt payment and performance when due (whether at the maturity date or by required prepayment, acceleration, or otherwise) of all Obligations of the Borrower to the Lender." Because the language of the contract is unambiguous, we do not consider the defendant's subjective intent. See USttrust v. Henley & Warren Mgt., Inc., 40 Mass. App. Ct. 337, 342-343 (1996) (summary judgment proper where agreement unambiguous and borrower produced no evidence of fraud).

3. Consideration. "It is established in our law that the physical movement of consideration -- whether from promisee

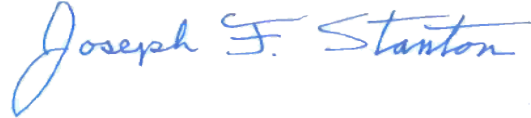
directly to promisor, from promisee to a third party at the promisee's direction, or from a third person at the promisee's direction to the promisor -- is irrelevant, so long as the promisee incurs a detriment or the promisor receives a benefit." New Bedford Inst. for Sav. v. Gildroy, 36 Mass. App. Ct. 647, 657 n.13 (1994). Here, the bank incurred a detriment by providing funds to the defendant's daughter. This was adequate consideration for the defendant's promise to repay. See id. (courts "have routinely imposed liability on individual comakers who themselves received no consideration, so long as loan funds were actually disbursed and at least one comaker or his designee has received a benefit"). There is no separate consideration required for the defendant's guaranty of the loan.

4. Attorney's fees. The guaranty contract provides that the "[g]uarantor agrees that whenever any attorney is used by the Lender to obtain payment hereunder, to enforce this Guaranty . . . the Lender shall be entitled to recover reasonable attorneys' fees, all court costs, and expenses." Accordingly,

the bank is contractually entitled to attorney's fees resulting from this appeal.¹

Judgment affirmed.

By the Court (Hanlon,
Ditkoff & McDonough, JJ.²),



Clerk

Entered: August 15, 2019.

¹ The bank shall have fourteen days from the date of this decision to submit an application for appellate attorney's fees, together with supporting documentation. See Fabre v. Walton, 441 Mass. 9, 10-11 (2004). The defendant shall have fourteen days thereafter to respond.

² The panelists are listed in order of seniority.